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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 569

In the Matter

—of—

WILLIAM S. HERRESHOFF, *Pro Se*,

Petitioner,

—v.—

UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The prefatory page to this main brief containing the titles and citations of all the statutes cited in the body of this brief and in all the documents in the record on appeal, follows:

UNITED STATES STATUTES AT LARGE

CONTAINING THE OFFICIAL EDITION

INTERNAL REVENUE CODE OF 1954

VOLUME 68A IN ONE PART

SEC.	PAGE OF 1954 OFFICIAL EDITION	TITLE	CITATION
111(a)	33	Recovery of bad debts	Debts which antedate tax laws
62(1)	17	Business deductions	Court disallowed deductions
165(1)	49	Losses incurred in business	Court disallowed losses
174(b)(1)	66	Amort. of research expense	SEE RECORD ON FILE.
6611(a)	819	Interest on overpayments	
6214(b)	773	Jurisdiction over other years	
7201	851	Attempt to evade tax	
7202	851	Failure to collect or pay tax	
7206(2)	852	Advises false return	
7206(5)(B)	853	Falsifying records	
6532(b)	816	SUITS by U. S. for recovery of funds	
7422	876	Civil actions for refund	
7423	877	Repayments to officers & employees	
7482(c)(1)	890	Powers of U. S. Ct. of Appeals	
7805(b)	917	Rules and Regulations and Retroactivity	

7202—851 Failure to Collect or Pay Over Tax

7214—(A)(1)
7214—(a)(2)
7214—(a)(7)
7214—(a)(8)
7214—(a)(9)
} IRS Offences

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1. Supreme Court of U. S. Rule No. 23 requires that this petition for a writ of certiorari shall contain in the order here indicated—

(a) Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled cause on May 11, 1964. The judgment of this Court affirmed the adverse decision of the Tax Court of the United States entered July 25, 1963 which disallowed the deduction of a burglary loss and allowed the unlawful assessment and collection of an income tax on benefits from a contract will made in 1908 for money loaned and services done from August 1903 through 1912. The Tax Court did not even allow petitioner to offer his evidence on the will. It would not incriminate him.

The findings of fact and opinion of the Tax Court dated May 23, 1963, the respondent's notice of deficiency dated July 8, 1960 and his abortive return for 1956 dated January 25, 1957 are all ingeniously abortive in the sense that they were designed to prevent the petitioner from presenting his evidence; and also to cover the tax collectors' felonious concealment of his $1950.00 ES tax he paid during and for 1956.

(b) Grounds on which the jurisdiction of this Court is invoked:

(b)(i) May 11, 1964 is the date of the decree and also the time of its entry sought to be reviewed.

(b)(ii) Both the Tax Court and the Appeals Court refused to grant any order respecting a rehearing.

The petitioner is deeply grateful to Mr. Justice John M. Harlan, Associate Justice of the Supreme Court of the United States, for his charity in twice extending the time for filing this petition for writ of certiorari because of the petitioner's illness. The first dated August 13, 1964 extended the time through September 7, 1964. The second dated September 9, 1964 extended the time through October 7, 1964.

(b)(iii) The sound judicial discretion and special and important reasons for it, stated in Rule 19 of the Supreme Court as required for granting a review on writ of certiorari is well justified by subparagraph (1)(b) of said Rule 19 as, "Where a Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by a lower court, as to call for an exercise

of this court's power of supervision." This quotation from Rule 19 (1)(b) seems to replace the statutory provision to confer jurisdiction on this court to review the judgment in question by writ of certiorari.

Questions

Whether the five tax courts of the IRS and the U. S. Appeals Court can ignore the tax code of 1954 and institute false proceedings on false statutes on their own initiative to prevent a taxpayer from presenting evidence to prove the cost and market value of his casualty loss. Thus the Tax Court unlawfully sustained the Commissioner's disallowance of said casualty loss and it is utterly false that the taxpayer had failed to offer any proof of the cost and fair market value of his documents. The accounting in this taxpayer's scientific research consists of supplying the great cost of his experiments from outside sources until benefits are realized, usually after long intervals of time and in large amounts. Code Section 174(b) describes similar income tax accounting for any taxable year beginning after December 31, 1953 and is not retroactive. The first systematic investigation in thermodynamics personally done by this petitioner started in the summer of 1888 to accurately determine the advantage of 900 degree F. superheated steam in generating mechanical energy and in economy of fuel. Information thus obtained has since been very profitable to him in the design, construction, repair and operation of both steam and internal combustion engines.

Statutes Involved

The statutes which this case involves are here set out verbatim and citing the volume and page where they may be found in the official edition which is

United States Statutes at Large Containing the Official Edition;

Internal Revenue Code of 1954;

Volume 68A in One Part, *Sec.* & *Page* of 1954 Official Edition.

111(a)—33. General Rule.—Gross income does not include income attributable to the recovery during the taxable year of a bad debt.

More Important.—The Federal Constitution, Art. 1., Sections 9 & 10 will not allow a contract to be governed by a law made later than the contract.

174(b)(1)—66. Research or experimental expenditures which are paid or incurred by the taxpayer in connection with his trade or business may be treated as deferred expenses.

Research engineering started before the Revenue Code cannot be governed by the Revenue Code.

Statement

The Court of first instance in which this taxpayer sought advice of 484 Lexington Avenue in January 1956 for a ruling on the tax status of benefits of a contract will made in 1908 to settle bad debts. This taxpayer was left sitting two hours at a table in the big room while the IRS agents conferred in another room. The photostat of the aforesaid will must have been very difficult and caused them to change their plans. When they returned they told the petitioner that all testamentary income was taxable and as its amount was unknown it was better to overpay the ES tax than to risk a heavy underpayment penalty. The petitioner now knew he had become their pigeon for 1956.

The attempted murder and burglary of April 13, 1956 confined petitioner to his bed the rest of 1956. He was made very sick in mind and body which has continued. On advice of IRS he paid $975 in June and $975 in September for his ES tax for 1956. On December 20, 1956 484 Lexington Avenue phoned him that neither their file section nor their cashier branch had a record of his having paid anything in 1956; that the sooner he paid his ES tax the less the heavy penalty and running interest would be; that filing a return for 1956 with income actually received without the fiduciary's statement of taxable income could be canceled by an amended return filed before April 15, 1957 after the fiduciary had finished its accounting. The taxpayer was too sick to remember how his $1950 ES tax was paid but was sure he paid it.

The taxpayer filed his first return January 25, 1957 with income actually received during 1956 and paid computed tax thereon by credit from the disputed ES tax. IRS accused him of demanding credit of the Treasury for money he had not paid.

He received his fiduciary's statement March 25, 1957, filed his correct amended return March 30, 1957 and paid its computed tax thereon by the same credit from the disputed ES tax. He trusted the IRS to cancel the first return and apply its credit to the amended return. But IRS would not cancel the first return. Their new plan for it was to falsely incriminate the taxpayer for short-stating its taxable income by $951—a technical amount by which the fiduciary's statement exceeded the sum of benefits sent the taxpayer during 1956. The income has not really contained any part of this $951—and never will—but every taxpayer knows that he must pay taxes on his fiduciary's statement of taxable income whether he received it or not.

In his decision of May 11, 1964, the Chief Judge of the Appeals Court repeatedly says the taxpayer was credited with the $951 and failed to pay the additional income tax required by virtue thereof. Both these statements are false. The $951 was not received by the taxpayer, but he did pay his taxes on it as explained above.

Because the Tax Court used these three abortive documents described in 1(a) *infra* to prevent the admission in the Tax Court of evidence of the violations of revenue laws by officers and employees of the United States and by the rules of procedure the Court was compelled to limit all testimony only to these three issues in the notice of deficiency; therefore this appellant is appealing from the decision of the Tax Court and respectfully requests that the three unlawful documents be held illegal and void and that only his legal amended return be honored for 1956.

CONCLUSION

During nearly nine years from January 1956 to date the petitioner has lost nearly ninety per cent of his investment in expensive laboratory and equipment. This disaster has been largely caused by the senseless malice of the employers of our government. It is inconceivable how the personnel of our treasury and of our courts could stoop to lying and slandering to defile a useful research engineer in their bitter fight to defend our embezzling thieves in our treasury unless we could believe that their personal economy is in some way linked or dependent on the activities of our thieves. Documentary evidence will be offered to prove statements herein.

This petitioner has no idea of retiring and is trying to build up his capital to pay off his debts and resume his vocation which is enhanced by experience. He feels that the Government owes him $100,000 damages for the injury its agents have done to him.

Respectfully submitted,

WILLIAM S. HERRESHOFF, *Pro se*

APPENDIX

Decision of Tax Court

(excluding purely formal parts)

Pursuant to the Opinion of the Court filed May 23, 1963 and respondent's computation of the tax liabilities filed with the Court June 25, 1963, incorporating herein the facts recited in that computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax for the year 1956 in the amount of $688.72.

ENTERED July 25, 1963.

/s/ EUGENE BLACK, Judge.

Decision of United States Court of Appeals

(excluding purely formal parts)

PER CURIAM:

William Herreshoff petitions for a review of a decision of the Tax Court of the United States which sustained the determination of the Commissioner that Herreshoff had failed to prove the cost or fair market value of certain documents stolen from him and that a credit made to his account by the trustee of a testamentary trust was taxable income to him. We affirm the decision of the Tax Court.

In April 1956 the building which the taxpayer owned at 253 West 256th Street, Bronx, New York, was broken into and various papers and technical documents which he had accumulated as an engineer during the prior forty-five years and which were stored in the building were either stolen or destroyed. On his 1956 income tax return the taxpayer claimed a deduction of $2,000 for the loss of these documents. The Tax Court sustained the Commissioner's disallowance of this deduction on the ground that the taxpayer had failed to offer any proof of the cost or fair market value of the documents. In the absence of any proof from which the value of the taxpayer's loss could be determined, the Tax Court properly sustained disallowance of the claimed deduction. See *Halle* v. *Commissioner*, 175 F. 2d 500 (2 Cir. 1949). The taxpayer's naked assertion that the documents were worth at least $20,000 did not satisfy his burden of proof.

In his 1956 tax return the taxpayer failed to include the sum of $951.41 which had been credited to him by the trustee of a testamentary trust. In a subsequent amended return he included the sum but failed to pay the additional income tax required by virtue thereof. The Tax Court prop-

erly sustained the Commissioner's notice of deficiency, which had been based on the original return. The taxpayer has raised for the first time on this appeal the claim that facts exist which would indicate that the sum involved was non-taxable income. The decision of the Tax Court may not be attacked on the basis of a claim raised here for the first time. See *General Utilities & Operating Co.* v. *Helvering*, 296 U. S. 200, 206 (1935).

The decision of the Tax Court is affirmed.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 569

WILLIAM S. HERRESHOFF, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In his income tax return for 1956, petitioner deducted $2000 as a casualty loss (§ 165(c)(3), Internal Revenue Code of 1954) arising from the theft of certain papers. The Tax Court disallowed the deduction because of petitioner's failure to offer any proof of the value of the papers. The court of appeals affirmed.

The Tax Court also included in petitioner's income an item of $951 credited to his account by the trustee

of a testamentary trust. On appeal, petitioner contended for the first time that the credit represented a repayment of a loan rather than income. The court of appeals held that the contention could not be raised for the first time on appeal.

For the reasons stated by the court of appeals (Pet. 10-11), the decision is correct. There are no grounds for further review. The petition for certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

JOHN B. JONES, JR.,
Acting Assistant Attorney General.

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NOVEMBER, 1964.

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